

IN THE SUPREME COURT OF MISSOURI

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No. 83901

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JAMES L. DRURY, et al.,

Respondents/Cross-Appellants,

v.

CITY OF CAPE GIRARDEAU, MISSOURI

Appellant/Cross-Respondents.

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On Appeal from the Circuit Court of Cape Girardeau County  
At Cape Girardeau, Missouri, Honorable Robert C. Stillwell

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BRIEF OF AMICI CURIAE CITY OF ST. LOUIS, MISSOURI,  
CITY OF KANSAS CITY, MISSOURI, AND  
THE MISSOURI MUNICIPAL LEAGUE

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### JURISDICTIONAL STATEMENT

Amici Curiae adopt for their Jurisdictional Statement the statement submitted by Defendant/Appellant City of Cape Girardeau, Missouri.

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### STATEMENT OF FACTS

Amici Curiae adopt for their Statement of Facts the statement submitted by Defendant/Appellant City of Cape Girardeau, Missouri.

## POINTS RELIED ON

I. The Trial Court erred in granting summary judgment to Respondents and in enjoining the City from collecting the 4% tax because the Respondents did not file their claim within the time frame prescribed by Missouri election laws and the public policy underpinning such election laws in that § 115.577 indicates that election contests must be filed within 30 days of official announcement of election results and Respondents claim was not filed within the mandatory 30 day period.

Clark v. City of Trenton, 591 S.W.2d 257 (Mo. App. 1979).

State ex rel. Bonzon v. Weinstein, 514 S.W.2d 357 (Mo. App. 1974).

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918 S.W.2d 252 (Mo. banc 1996).

Wells v. Noldon, 679 S.W.2d 889, 891 (Mo. App. 1984)

§ 115.577 RSMo.

Certification of Election Results

Proceedings of City Council, City of Cape

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II. The Trial Court Erred In Granting Summary Judgment To Plaintiffs Drury And In Enjoining The City From Collecting The Tax Because The City's Ordinance Did Not Violate The "Clear Title" Requirements Of The City's Charter In That Both The City Council And The Electorate Were Fully Apprised Of The Nature And Content Of The Ordinance.

508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823. (Mo. banc 1965).

C. C. Dillon Company v. City of Eureka, 12 S.W.3d 322 (Mo. banc 2000).

Hammerschmidt v. Boone County, 877 S.W.2d 98 (Mo. banc 1994).

Westin Crown Plaza Hotel Company v. King, 664 S.W.2d 2 (Mo. banc 1984).

Fust v. Attorney General for the State of Missouri, 947 S.W.2d 424 (Mo. banc 1997).

III. The Trial Court erred in granting summary judgment to Plaintiffs and in declaring all of Ordinance 2403 void and enjoining collection of the 4% tax because the proper remedy where a “Clear Title” violation is found in a City ordinance is to sever those portions falling outside of the title to the ordinance and the Trial Court did not apply this remedy in that they found the entire ordinance invalid where part of the ordinance should have been allowed to remain in effect.

508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823 (Mo. 1965).

City of Boonville v. Rowles, 869 S.W.2d 889 (Mo. App. 1994).

City of St. Louis v. Breuer, 223 S.W. 108 (Mo. 1920).

National Solid Waste Management Association v. Director of the Department of Natural Resources, 964 S.W.2d 818 (Mo. banc 1998).

Section 3.14, City Charter, City of Cape Girardeau.

Section 1-5, City Code, City of Cape Girardeau.

## ARGUMENT

### Statement of Interest

Both the City of St. Louis and the City of Kansas City (“Cities”) have provisions similar in effect to § 3.14 of the Cape Girardeau City Charter, the provision found to have been violated by Ordinance No. 2403 of the City of Cape Girardeau (the “Ordinance”). Article IV, § 13 the St. Louis Charter reads “No bill . . . shall contain more than one subject, which shall be clearly expressed in its title.” § 1-3 of the City Code of Kansas City requires that “All ordinances . . . passed shall have a title indicating the nature and object thereof,” while Resolution 941393 2nd Comm. Sub., passed November 21, 1994, requires that “[n]o ordinance shall contain more than one subject.” The effect of these provisions is similar to Cape Girardeau’s charter, in that they require the title of an ordinance to set forth the subject of the ordinance. Thus, the ordinances of both cities are subject to the same type of challenge brought in this case.

The Missouri Municipal League (“MML”) is an association of Missouri cities, towns and villages. MML’s members include 24 constitutional charter cities with “clear title” charter provisions similar to that of Cape Girardeau.

If the result in this case is allowed to stand, thousands of ordinances, including those calling elections, will be subject to challenge, with unknown consequences to both the established laws and finances of the cities. Additionally, the standard of specificity required for future ordinances would be uncertain. For these reasons, the Cities of St. Louis and Kansas City, and the Missouri Municipal League, submit this brief on behalf of the City of Cape Girardeau, having received the verbal consent of all parties to its filing.

### Standard of Review

The standard of review on a grant of summary judgment is “essentially *de novo*” because the trial court’s decision is based upon the record submitted and the law. ITT Commercial Finance Corporation v. Mid America Marine Supply Corporation, 854 S.W.2d 371, 376 (Mo. banc 1993).

I. The Trial Court erred in granting summary judgment to Respondents and in enjoining the City from collecting the 4% tax because the Respondents did not file their claim within the time frame prescribed by Missouri election laws and the public policy underpinning such election laws in that § 115.577 indicates that election contests must be filed within 30 days of official announcement of election results and Respondents claim was not filed within the mandatory 30 day period.

The City ordinance at issue called for an election on the question of whether a particular City tax should be extended and increased. That election occurred on November 3, 1998, and the City’s voters approved the tax increase and extension, which went into effect on January 1, 1999. The Plaintiffs filed their action on April 5, 1999. *Legal File*, pp. 5-7, 29-30, 33. Missouri election law, however, requires that any action contesting the outcome of an election must be filed within 30 days of election certification, which occurred on November 5, 1998. See appended Certification of Election Results; Proceedings of City Council, City of Cape Girardeau, Mo. for November 6, 1998. Thus, the plaintiffs filed this action well after the expiration of the statutory period. The trial court’s judgment, declaring the invalidity of the City’s Ordinance and nullifying the election results, contravenes both the requirements of the

statute and its underlying public policy. For these reasons the judgment of the trial court should be reversed.

The election contest provisions contained in Chapter 115 of the Missouri Revised Statutes provide the exclusive means for challenging an election. State ex rel. Industrial Services Contractors, Inc. v. County Comm'n of Johnson County, 918 S.W.2d 252, 255 (Mo. banc 1996). Issues relating to the wording of a ballot and the notice of an election are to be challenged only through statutory election contest procedures. Id. at 255. The Ordinance at issue in the current case, in addition to amending the City code, calls for an election on the question of whether such amendments are to be given effect and provides the form of notice to be given to the election authority for publication. By seeking to invalidate the outcome of an election through a challenge to the validity of the Ordinance calling the election, the Respondents have engaged in an election contest. Since they have not complied with the statutes governing such actions, the trial court ruling in favor of the Respondents must be overturned insofar as it invalidates the election held regarding the tax increase. The filing of an election challenge outside of the statutory challenge period deprives the trial court of subject matter jurisdiction to hear the challenge, and thus is an issue that may be raised at any time. See Wells v. Noldon, 679 S.W.2d 889, 891 (Mo. App. 1984).

The Respondents contend that their action to challenge the validity of the Ordinance is not an election challenge and should not be governed by the statutory restrictions relating to such challenges. While perhaps not an election challenge in name, the effect of the Plaintiff's action is to invalidate an election by invalidating an ordinance

through a petition filed after the period for election challenges had expired. *Cf. Clark v. City of Trenton*, 591 S.W.2d 257 (Mo. App. 1979). This result is directly contrary to the statutory provisions governing election challenges and the public policy underpinning such statutes.

The election challenge statutes in Missouri give a crucial degree of certainty to governmental entities submitting questions to the voters. “The Comprehensive Election Act of 1977, in part, was obviously intended to give finality and conclusiveness to elections, and, to that end, accelerated judicial procedures were incorporated to govern election contests.” *Clark*, 591 S.W.2d at 259. Nowhere is this intent more clearly manifested than in § 115.577 RSMo, which establishes the 30-day limitation period for election contests. While election contestants have 30 days to file their challenge, after that time the governmental entity may rely on the election results, certain in the validity of the measure presented. The government may levy approved taxes, issue bonds, award franchises or otherwise proceed with the activity authorized by the voters, without fear of subsequent attack. The statutorily prescribed 30 day contest period effectively balances the interests of those who would challenge an election by affording them a reasonable opportunity to do so, after which the governmental entity is free to implement the activity authorized at the election. Without this certainty the purpose of the statute is negated. “The integrity of the dual concepts of finality and conclusiveness of free elections would be fatally compromised if persons wishing to contest them could wait indefinitely or an inordinate length of time to do so.” *Clark*, 591 S.W.2d at 259.

Public policy concerns also dictate that elections should be given effect where possible, and that the period to challenge elections should be brief and finite. “[W]here the irregularity has been such as not to have interfered with a full and fair expression of the voters’ choice . . . , the irregularity should not result in the disenfranchisement of the voters.’” *State ex rel. Bonzon v. Weinstein*, 514 S.W.2d 357, 364 (Mo. App. 1974) (*quoting Elliot v. Hogan*, 315 S.W.2d 840, 846 (Mo. App. 1958)). In the current case, the voters of the city of Cape Girardeau have already approved increasing the tax from 3% to 4%. The order of the trial court enjoining the collection of the tax effectively nullifies the approval of the people, with litigation on the question now continuing approximately 3 years after such approval. This is exactly the type of situation the election challenge statutes were designed to prevent. There have been no allegations of fraud on the voters during the election process or any other activity that would have interfered with their decision on whether the rate of tax should be raised from 3% to 4%. Thus, the decision of the voters should be allowed to stand regardless of the validity of the ordinance calling the election.

The issuance of bonds provides a practical example of how the trial court’s decision will have an impact far beyond the current Cape Girardeau Ordinance in question. Missouri law authorizes cities, counties and other local governments to incur indebtedness to finance public purpose projects after receiving the requisite voter approval. If the trial court decision stands, then bond purchasers bear additional risk due to the uncertainty over whether the election authorizing the bonds might be challenged months or even years after the election. This additional risk could make it more difficult

for Missouri political subdivisions to borrow money. At a minimum, the bonds will bear interest at a higher rate due to the additional risk. Additionally, if litigation is actually ongoing, the bonds approved by the voters either will not be marketable or the local government would have to arrange interim financing during the litigation at higher interest rates and with duplicative costs at the time the temporary financing is made permanent. This is exactly the type of problem that the 30-day statutory contest period seeks to avoid, as governmental entities now have only to wait a limited -- and certain -- amount of time after the announcement of election results to ensure that the election itself will not be challenged.

The title of a petition for relief is not determinative. Clark, 591 S.W.2d at 259. Rather, the court should look at the substance of the petition, and in the current case, just as in Clark, the effect is to invalidate an election based on the proceedings to call it. Because the Plaintiff's petition was not filed within the 30-day time period mandated by § 115.577 RSMo, it does not comply with the election challenge statutes. Thus, the election must be given full effect, regardless of any decision relating to the validity of the Ordinance. This Court should reverse the trial court's judgment and award summary judgment to the City.

II. The Trial Court Erred In Granting Summary Judgment To Plaintiffs Drury And In Enjoining The City From Collecting The Tax Because The City's Ordinance Did Not Violate The "Clear Title" Requirements Of The City's Charter In That Both The City Council And The Electorate Were Fully Apprised Of The Nature And Content Of The Ordinance.

As indicated by the Suggestions of the Attorney General of Missouri in Support of the City's Application for Transfer, the methodology used in the past to address "clear title" challenges are anything but clear. In fact, in the instant case the rigid application of the historical approach could lead to the conclusion that the City's Ordinance is "underinclusive" in violation of charter requirements (because two of nine Ordinance articles are not represented in the Ordinance title). *Amici curiae* suggest that such strict adherence to doctrinal criteria mischaracterizes the import and effect of the non-represented articles in light of the fundamental purpose of "clear title" requirements, especially in this context when the City's electorate was apprised of the nature and content of the Ordinance and voted to approve the tax increase at issue.

Missouri case law provides some base-line guidance with regard to clear title challenges. Courts generally grant legislative deference in such cases. The legislation has a presumption of legality, and it is to be upheld unless it "clearly and undoubtedly" violates the clear title requirement. *Hammerschmidt v. Boone County*, 877 S.W.2d 98, 102 (Mo. banc 1994). The burden of proof lies on the challenging party. All doubts must be resolved in favor of the act's validity, and the court is allowed to make every reasonable intendment to sustain the validity of the legislation. *Westin Crown Plaza Hotel Company v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

The fundamental purpose of an "honest title" requirement is to prevent surprise or fraud upon legislators and to fairly apprise the public of the pending legislation's subject matter. *See Hammerschmidt*, 877 S.W.2d at 101-102; *Westin Crown Plaza Hotel*, 664 S.W.2d at 5. As expressed by this Court:

The evil to be avoided is imposition on members of the legislature and interested people. By requiring a “clear” title—one which is not designed as a cover—the legislators will not be misled into overlooking or carelessly or unintentionally voting for vicious and incongruous legislation, and interested people will be notified of the subjects of legislation being considered in order to have an opportunity to be heard thereon.

508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823, 828-829. (Mo. banc 1965).

In an effort to implement the fundamental purpose of “honest title” requirements Missouri courts have developed categories and tests by which to assess the legality of questioned legislation. Our courts have recognized two distinct procedural limitations: (1) an ordinance cannot contain more than one subject, and (2) the subject of the ordinance must be clearly expressed in the title. See C. C. Dillon Company v. City of Eureka, 12 S.W.3d 322, 328 (Mo. banc 2000). But this duality has been dissected further. There are two kinds of “clear title,” as opposed to single subject, challenges--where the title is so broad and general that anything could come within its scope, and where the title is so specific that it fails to reference the actual content of the legislation.<sup>1</sup> Fust v. Attorney General for the State of Missouri, 947 S.W.2d 424, 428 (Mo. banc 1997). A number of cases have been determined based on these primary distinctions and the tests attributed to the noted categories.

But the instant case presents a new paradigm. In this scenario, the title to the Ordinance clearly expresses the Ordinance’s prime purpose--the calling of an election to

approve a tax increase and extension. The title, admittedly, does not reference two articles that can best be described as normative rather than substantive. That is, they describe certain legislative actions, and restrictions and conditions, to be implemented and applied *in the future* and concerning the *future* use of the tax proceeds, *provided* the voters approved the requested tax increase. Because those articles do not place into motion any action or policy of the city, *amici curiae* suggest that their absence from the Ordinance's title does not make the title underinclusive in violation of the city's charter requirements.

A copy of the City's Ordinance, and the full text of the "non-represented" articles, are appended. Article 7 addresses the City's *intention* with respect to use of the tax to be levied pursuant to other portions of the Ordinance if the tax is approved by the voters. It reflects the need for future "appropriations" of tax revenues and foresees the potential for bonds "to be issued" *if* the State and the University provide funding "sufficient, in the determination of the City Council" for the anticipated project and *if*, in the future, the City separately agrees to enter into a related agreement with the University. Similarly, Article 8 expresses an *intent* on the part of the City to terminate the proposed tax if "in the determination of the City Council" other parties have not committed "sufficient" funds for the desired project by a certain date, and an *intent* to make alternative use of interim tax proceeds if that happens.

In sum, Articles 7 and 8 do not appropriate money, issue bonds, or provide for the construction and operation of project facilities. Neither article is self-effectuating. Each

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<sup>1</sup> The ordinance at issue is challenged on the basis of being underinclusive.

article expresses the necessity for, and is conditioned upon, future actions by the City Council which themselves require separate legislative enactments. The provisions are not the *actions* which the Ordinance and its title dictate: submitting a proposed tax to the voters and so amending the City Code if approved. None of this Court's prior "clear title" jurisprudence has held that legislation can be invalidated on the basis of included elements which do not constitute legislative action.

The essence of a "clear title" inquiry is whether the title of the ordinance affirmatively misleads the reader. In 508 Chestnut this Court posited specific questions helpful in considering the issue. Would a legislator or an interested member of the public "be imposed upon, misled, deceived or surprised by the enactment of [the ordinance] under [its] title?" Are all provisions of the Ordinance "germane, that is, closely allied, fit and appropriate, and of a similar nature to the subject expressed in the title?" Do any of the provisions included in the Ordinance constitute "vicious" or "incongruous" legislation, or does the title serve as a cover for such legislation? See 508 Chestnut, 389 S.W.2d at 829.

The title of Ordinance No. 2403 specifies as its subject matter the adoption of a tax increase. No one would reasonably "be imposed upon, misled, deceived or surprised" by the prospective provisions contained in Articles 7 and 8 -- they naturally and inherently relate to a new tax, and their inclusion in the legislation cannot be a source of surprise or deception.

Are Articles 7 and 8 "closely allied, fit and appropriate, and of a similar nature to the subject expressed in the title?" The articles, while not binding on the actions

authorized by the Ordinance (submitting and enacting the tax), are clearly related to the core subject matter of the legislative elements of the Ordinance.

Do Articles 7 and 8 constitute “vicious” or “incongruous” legislation, or does the title serve as a cover for such legislation? The quoted terms imply deception used for the purpose of passing the Ordinance. Articles 7 and 8 are undeniably related to the subject matter of the Ordinance. While the title of the Ordinance may not reference their provisions, the text of the articles are not of such a nature that the title would serve to “cover” the existence of these provisions. Compare St. Louis County Water Company v. Public Service Commission of Missouri, 579 S.W.2d 633, 636 (Mo. App. 1979) (striking down an act “providing notice to operators of underground facilities” because it included the imposition of a duty on public utilities to maintain property they did not own).

Both the trial court and this Court are constrained by the record below. It is important to note, therefore, that Respondents failed to submit one iota of evidence even tending to establish that any City Council member was deceived by the title to the Ordinance. And since one of the fundamental purposes of a “clear title” requirement is to prevent surprise or fraud upon legislators, *amici curiae* suggest that in the context of this Ordinance and its various parts, Respondents have simply failed to demonstrate any surprise by or deception of the lawmakers who voted for the Ordinance.<sup>2</sup>

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<sup>2</sup> It may be appropriate to point out the obvious fact that this case involves a city council having few members, and not a legislative body numbering in the hundreds.

The other fundamental purposes of a “clear title” requirement is to fairly apprise the public of the pending legislation’s subject matter. Again, the circumstances of this case demonstrate that the public was specifically apprised of the Ordinance’s subject matter. As noted by the Missouri Attorney General, the Ordinance did not become truly effective until after the City’s voters had approved the tax increase. And the tax increase was submitted to the voters not by the title to the Ordinance, but by a ballot much broader in scope:

Shall the license tax on hotels and motels set out in Section 15-397 of the Code of Ordinances of the City of Cape Girardeau, Missouri, be increased from three (3) percent to four (4) percent of gross receipts derived from transient guests for sleeping accommodations, and shall the license tax on hotels, motels and restaurants set out in that section be extended to expire on December 31, 2030, for the purpose of paying a portion of the costs of acquiring, construction, furnishing and equipping a performing arts center, museum and associated cultural facilities for the City of Cape Girardeau and Southeast Missouri State University to be located at the University’s River Campus?

*Amici curiae* suggest that this ballot language informed the public of the content and nature of the Ordinance and its subject matter, and that Respondents again failed to produce any evidence to the contrary.

Articles 7 and 8 are a legitimate part of Ordinance No. 2403. The title to legislation need not describe every detail contained in the law to avoid invalidity as

“underinclusive.” Because the title to the Ordinance does not operate to deceive, defraud or mislead anyone, because the challenged articles are not truly legislative enactments, and because the City’s electorate approved a ballot proposition which fully informed them of the use to be made of the tax proceeds, the City’s Ordinance should not be held to violate the “clear title” charter requirement. This Court should reverse the trial court’s judgment and award summary judgment to the City.

III. The Trial Court erred in granting summary judgment to Plaintiffs and in declaring all of Ordinance 2403 void and enjoining collection of the 4% tax because the proper remedy where a “Clear Title” violation is found in a City ordinance is to sever those portions falling outside of the title to the ordinance and the Trial Court did not apply this remedy in that they found the entire ordinance invalid where part of the ordinance should have been allowed to remain in effect.

When a statute or city ordinance violates an applicable “clear title” provision, where possible courts strive to sever those portions of the law falling outside the title in order to give the statute or ordinance as much effect as possible. Thus, upon a finding that Cape Girardeau’s “clear title” charter provision, Section 3.14, had been violated, the trial court should have severed the offending provisions from the Ordinance and allowed the remainder of the Ordinance to continue in effect. The trial court failed to do so. Instead, it declared the City’s Ordinance invalid and enjoined collection of the tax. The trial court erred in failing to sever the offending portions of the City’s Ordinance.

Because of the similarities between charter provisions and the Missouri Constitution, clear title and multiple subject challenges to the ordinances of constitutional

charter cities should be evaluated under standards established for state statutes. See 508 Chestnut, Inc. v. City of St. Louis, 389 S.W.2d 823 (Mo. 1965). Where a bill passed by the Missouri General Assembly is found to be in violation of a clear title provision, courts have historically severed those provisions of the bill falling outside of the title, provided that the intent of the legislature can be ascertained. See National Solid Waste Management Association v. Director of the Department of Natural Resources, 964 S.W.2d 818, 822 (Mo. banc 1998). In National Solid Waste - an “underinclusive” clear title case - the court relied upon the “severance statute,” § 1.140 RSMo, in upholding a portion of a bill relating to solid waste while severing a portion relating to hazardous waste. Id. The court found that the title of the bill did not adequately reflect its content relating to hazardous waste, but since the intent of the legislature was to deal with solid waste management, as demonstrated in the title of the bill, those portions of the bill relating to solid waste management were allowed to continue in effect. Id.

This Court has applied the principle of severance to city ordinances enacted in constitutional charter cities in the context of a title challenge. In City of St. Louis v. Breuer, 223 S.W. 108 (Mo. 1920), the court examined a challenge to an ordinance based in part upon a provision of St. Louis’ charter which read “‘No bill, except \*\*\* shall contain more than one subject which shall be clearly expressed in its title.’” Id. at 111. The contention was that the title of the ordinance in question contained only one subject, the establishment of a street, while the ordinance itself dealt with two, which included the establishment of a street and the establishment of a triangular piece of land as a highway. Id. The court held that “[i]t does not clearly appear from the ordinance itself that the

triangular piece is not included. If it is not, then that part of section 1 of the ordinance describing it was not clearly expressed in the title. *That would only invalidate the ordinance as to the triangular tract. The remaining part of the ordinance would be valid and operative.*” Id. (emphasis added).

Stated alternatively, if part of an ordinance is invalid, a court should not invalidate the entire ordinance unless the legislative body would not have passed the ordinance if it knew of the problem. *See, e.g. City of Boonville v. Rowles*, 869 S.W.2d 889, 892 (Mo. App. 1994). The primary intent of the City Council of Cape Girardeau in passing the ordinance, as evidenced by the title, was to call an election related to a tax increase. The title itself suggests that the City Council would have passed the Ordinance, even if it had known the questioned sections were invalid, because the invalid provisions would have had no effect on the election or the tax increase. *See Breuer; Rowles, supra*.

The council’s intent can further be gleaned from the effects of the various portions of the Ordinance. Those sections of the Ordinance represented in the title, i.e., the tax increase and the election, are fundamental to the purpose of raising funds for the joint construction of the desired cultural facilities. The City Council obviously would not have passed the legislation had it know of a legislative defect in the tax increase or the election itself.

In contrast, the “non-represented” sections, Articles 7 and 8, only establish parameters for the disposition of tax proceeds, and such parameters are entirely dependent upon the happening of future events and actions by the City Council. If Articles 7 and 8 are severed today, the City Council can still implement those provisions

by subsequent legislation. Since those provisions can be resurrected, it is reasonable to say that the City Council *would* have passed the legislation to put into effect the tax increase and the election, regardless of any legislative defect in Articles 7 and 8. Assuming the invalidity of those Articles, the trial court should not have invalidated the entire Ordinance because the City Council would have passed the Ordinance in any event if it had known of the problem. See Rowles, 869 S.W.2d at 892.<sup>3</sup> This Court should reverse the trial court's judgment and remand the case with instructions to sever Articles 7 and 8.

### CONCLUSION

Whether or not Ordinance 2403 of the City of Cape Girardeau is valid in its entirety, the election to approve a tax increase should be allowed to stand. Challenges to elections in Missouri are strictly governed by statute, and the Respondents in this case did not comply with these statutes, particularly the requirement that a petition for relief be filed within 30 days.

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<sup>3</sup> Also in favor of upholding a portion of the current Ordinance is § 1-5 of the Cape Girardeau City Code, which contains a severance provision which provides that the invalidity of a portion of the City Code will not affect the validity of other provisions therein. While not directly speaking to all ordinances of the City, this provision does demonstrate the legislative intent of the City that enactments which may fail for some reason need not fail entirely.

Additionally, the Plaintiff in the current matter has not demonstrated that Ordinance 2403 did violate the “clear title” provision of Cape Girardeau’s City Charter. The articles in question were passed upon by the City’s voters and the title itself did not serve to mislead a reader of the Ordinance.

Finally, even if Ordinance 2403 is partially invalid, the invalid portions should be severed and the remainder allowed to continue in effect. Decisions of this Court for the last 80 years have upheld this principle, whether related to State statutes or municipal ordinances. There is no reason to depart from this long-established line of authority in the current case.

For the foregoing reasons, amici curiae, the City of St. Louis, Missouri, the City of Kansas City, Missouri and the Missouri Municipal League urges the Court to reverse the judgment below.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Two copies of this document were mailed, first-class postage prepaid, on October 15, 2001, to:

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## CERTIFICATE OF COMPLIANCE WITH RULE 84.06

The undersigned certifies that the foregoing Brief of Amici Curiae City of St. Louis, Missouri, City of Kansas City, Missouri, and the Missouri Municipal League includes the information required by Rule 55.03, and complies with the requirements contained in Rule 84.06(b). Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in the Amici Curiae brief is 5,811.

The undersigned further certifies that pursuant to the requirements of Rule 84.06(g), the enclosed disk has been scanned for viruses and that it is virus-free.

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